मामला क्रमांक ...Cr.A.No.5/2001... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT Ilju, son of Budhiya Ram, aged 25 years, R/o. Lahupani-Petla, P.S. Sitapur, Distt. Sarguja (C.G.)

Versus

RESPONDENT State of Chhattisgarh, through Station House Officer, P.S. Sitapur, Distt. Sarguja (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

26-3-2007

Shri Manoj Mishra, Advocate for the appellant.

Shri D.K. Gwalre, Additional Public Prosecutor, for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 30th November, 2000 passed by 1st Additional Sessions Judge, Ambikapur (Sarguja) in S.T. No. 90/2000, whereby the learned Additional Sessions Judge after holding accused/appellant guilty for commission of offence under Sections 302 and 201of the Indian Penal Code for committing murder of his mother and for causing disappearance of evidence to screen himself from legal punishment, sentenced him to undergo imprisonment for life and R.I. for five years respectively. It was further directed that both the sentences shall run concurrently.

2. Case of the prosecution, in brief, is that on the date of incident i.e. 26-12-1999, the accused-appellant was residing with his mother. About the incident i.e. death of Basobai, mother of the accused-appellant, report Ex. P-1 was given by village Choukidar Tihuldas (P.W. 1) on 28-12-1999 in Police Station, Sitapur. He mentioned in the report that said information was given to him by Amrit Kindo

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(P.W. 2) who informed Tihuldas that the accused went to Mankunwar (P.W. 3) for medical treatment of Basobai (since deceased), on which Mankunwar (P.W. 3) advised him to take his mother to Primary Health Centre, Sitapur. Before Tihuldas reached to the spot, body of Basobai was already buried. He was informed that Basobai died on account of illness, on which he gave Merg intimation Ex. P-2. Thereafter under the orders of Sub Divisional Magistrate, Ambikapur, Station House Officer, Police Station, Sitapur went to the spot, in presence of Tehsildar after giving notice under Ex. P-3 to Panchas, exhumed the body of Basobai, prepared inquest report Ex. P-4. Site plans Ex. P-5 and P-6 were prepared. From the place of occurrence, blood stained soil and plain soil was taken into possession under Ex. P-7. While in police custody, accused appellant gave memorandum Ex. P-9, in pursuance of that, one wood was seized under Ex. P-10. Post mortem on the body was conducted by Dr. M. Nikunj (P.W. 10). He opined that Basobai died due to head injury about a week before. He prepared post mortem report Ex. P-17. Thereafter under Ex. P-21, First Information Report was registered for commission of offence under Sections 302 and 201 of I.P.C. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur from where learned 1st Additional Sessions Judge, Ambikapur received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused-appellant examined 11 witnesses. Statement of accused-appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him and stated that he is innocent. He has been falsely implicated in the crime. Learned 1st Additional Sessions Judge, after hearing counsel for the respective parties, convicted and sentenced him as aforementioned.

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4. We have heard learned counsel for the parties.

5. Counsel for the accused-appellant argued that in fact, there is no evidence to connect the accused-appellant with murder of his mother Basobai. He has been convicted without any evidence on record.

6. On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

7. Having heard learned counsel for the parties, we have perused the record. Virtually in this case, there is no evidence to connect the accused-appellant with the crime in question. Tihuldas (P.W. 1) who gave report Ex. P-1 regarding death of Basobai, has stated that he gave that report on the information given by one Amrit Kindo. Amrit Kindo (P.W. 2) has turned hostile. He has stated that one person came on their quarter, asked his wife that his mother has sustained injury, therefore she needs treatment. Kehra Uraon had not disclosed anything about marpeet. In the evening, he informed Tihul that Basobai has died on account of injury. Similarly, P.W. 3 Mankunwar has also turned hostile. She has stated that accused has not told anything about quarrel or beating to his mother. She has not supported the prosecution case. Similarly, P.W. 4 Rucharam has also turned hostile. He has stated that Ilju has not informed anything to him. P.W. 5 Jhadaram has also turned hostile. He has stated that how Basobai died, he does not know. When Basobai was being buried, the accused was not there. Ilju did not tell anything to him. P.W. 6 Dileshwar Prasad has stated that when the body was exhumed and post mortem was conducted, he was there but the accused was not there. Panchnama Ex. P-4 was prepared in his presence, which bears his signature. Map was not prepared in his presence. He has also turned hostile. P.W. 7 Mahant Das has also turned hostile. He has stated that Ilju, the accused has not disclosed anything to the police in his presence. P.W. 8 Tahsildar Rajesh Sahi has simply

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stated that body was exhumed in his presence, Panchnama was prepared and Dr. Nikunj conducted post mortem. P.W. 11 Sub Inspector B.B. Singh who conducted investigation has stated that the body was exhumed on 2-1-2000. Panchnama was prepared in presence of Executive Magistrate, Sitapur. Post mortem was conducted by Asstt. Surgeon, Primary Health Centre, Sitapur. Accused gave memorandum Ex. P-9 on 23-1-2000 regarding wood, the weapon of offence, in pursuance of that, the wood was seized under Ex. P-10 from kitchen garden in back side of the house of the accused. In F.S.L. report, it is mentioned that blood was found on the piece of wood, but there is nothing in the report whether the blood was human blood and what was the blood group of that blood. Therefore, merely on this ground, the accused cannot be connected with the crime in question because wood which was recovered, such wood is normally available every where.

8. Next question remains that Dr. M. Nikunj (P.W. 10) who conducted post mortem and has stated that there was lacerated wound in the size of 5 cm x 1 cm bone deep in left side the head. On opening of skull, clotted blood was found and cause of death was head injury. But in cross-examination, he has stated the he is not in a position to tell about the size of injury and clotted blood was on the skull, therefore he has not given any opinion about the size of the injury. He opined that beneath skull such kind of injury can be sustained by fall.

9. Therefore, virtually there is no evidence that the accused in any manner assaulted his mother. Dr. Nikunj's opinion is also wavering. He has stated that such kind of injury can be sustained by fall also which was found on the skull of the deceased. Therefore, virtually there is no evidence on record against the accused to connect him with the crime in question except that the body was buried 150 meters away from the house of the accused and some injury was found on

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skull of the deceased. There is no cogent and clear circumstantial evidence to connect the accused with the crime that the accused was the person who attacked the deceased with intention to cause her death more so without any legal evidence on record, suspicion howsoever strong it may be, cannot take the place of proof.

10. For the foregoing reasons we are of the considered opinion that conviction and sentence imposed upon the accused-appellant under Sections 302 and 201 of I.P.C. cannot be sustained and same are liable to be set aside.

11. In the result, appeal succeeds. Conviction and sentence imposed upon the appellant under Sections 302 and 201 of I.P.C. are set aside. He is acquitted of those charges. It is stated that the accused-appellant is in detention since 23-1-2000. Therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.